

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 18-120V

K.G.,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Special Master Corcoran

Filed: December 21, 2022

Zachary James Hermsen, Whitfield & Eddy Law, Des Moines, IA, for Petitioner.

Voris Edward Johnson, U.S. Dep't of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 24, 2018, K.G. filed a petition seeking compensation under the National Vaccine Injury Compensation Program ("Vaccine Program").² Petitioner alleged that she suffered from Guillain-Barré syndrome ("GBS") as a result of her October 12, 2011, receipt of the influenza ("flu") vaccine. (She later contended she had experienced a chronic GBS variant due to vaccination).

¹ Because this decision contains a reasoned explanation for my actions in this case, I will post it on the United States Court of Federal Claims website, in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 (2012). As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the decision's inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the whole decision will be available to the public. *Id.*

² The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3758, codified as amended at 42 U.S.C. §§ 300aa-10 through 34 (2012) ("Vaccine Act" or "the Act"). Individual section references hereafter will be to § 300aa of the Act (but will omit that statutory prefix).

Respondent denies that the flu vaccine caused Petitioner to suffer from GBS or any other injury or condition. Nonetheless both parties, while maintaining their above-stated positions, agreed in a stipulation (filed on December 14, 2022) that the issues before them could be settled, and that a decision should be entered awarding Petitioner compensation.

I have reviewed the file, and based upon that review, I conclude that the parties' stipulation (as attached hereto) is reasonable. I therefore adopt it as my decision in awarding damages on the terms set forth therein.

The stipulation awards:

- A lump sum of \$102,941.76, in the form of a check payable jointly to Petitioner and the Whitfield & Eddy Trust Account; and
- A lump sum of \$14,558.24 to satisfy a State of Iowa Medicaid lien, in the form of a check made payable jointly to Petitioner and:

Iowa Medicaid
PO Box 36446
Des Moines, IA 50315
Ref.: K. Gipple, IME Case No. 129597

Stipulation ¶ 8. These amounts represent compensation for all damages that would be available under Section 15(a) of the Act.

I approve a Vaccine Program award in the requested amounts set forth above to be made to Petitioner. In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court is directed to enter judgment herewith in accordance with this Decision.³

IT IS SO ORDERED.

/s/ Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by each filing (either jointly or separately) a notice renouncing their right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

K.G.,)	
)	
)	
Petitioner,)	
)	
v.)	No. 18-120V (ECF)
)	Chief Special Master Corcoran
)	
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. K.G. (“petitioner”) filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the “Vaccine Program”). The petition seeks compensation for injuries allegedly sustained following petitioner’s receipt of an influenza (“flu”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a).
2. Petitioner received a flu vaccine on October 12, 2011.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she suffered the injury Guillain-Barré syndrome (“GBS”) within the time period set forth in the Table. Petitioner further alleges that she experienced the residual effects of her GBS for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.
6. Respondent denies that the flu vaccine caused petitioner’s alleged GBS or any

other injury, or her current condition.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

- a. A lump sum of \$102,941.76, in the form of a check payable jointly to petitioner, K.G., and the Whitfield & Eddy Trust Account; and
- b. A lump sum of \$14,558.24¹ to satisfy a State of Iowa Medicaid lien, in the form of a check made payable jointly to petitioner and:

Iowa Medicaid
PO Box 36446
Des Moines, IA 50315
Ref.: K. Gipple, IME Case No. 129597

Petitioner agrees to endorse this check over to Iowa Medicaid.

These amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings

¹ This amount represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Iowa may have against any individual as a result of any Medicaid payments Iowa Medicaid has made to or on behalf of K.G. as a result of her alleged vaccine-related injury suffered in or around January 2012, under Title XIX of the Social Security Act, see 42 U.S.C. § 300aa-15(g), (h).

before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq.), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursed expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner, as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury

Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to, or death of, petitioner resulting from, or alleged to have resulted from, the flu vaccine administered on October 12, 2011, as alleged by petitioner in a petition for vaccine compensation filed on or about January 24, 2018, in the United States Court of Federal Claims as petition No. 18-120V.

14. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation, or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States of America or the Secretary of Health and Human Services that petitioner's alleged GBS and residual effects, or any other injury, were caused by the flu vaccine.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, successors and/or assigns.

END OF STIPULATION


[illegible]

Respectfully submitted,


PETITIONER:


K.G.

**ATTORNEY OF RECORD FOR
PETITIONER:**


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**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**

George R. Grimes - Digitally signed by George R.
Grimes -S14
S14 Date: 2022.11.29 17:51:08 -05'00'

CDR GEORGE REED GRIMES, MD, MPH
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Dated: 12/14/2022